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August 2, 2019

Via FOIA Online

Freedom of Information Officer
U.S. Environmental Protection Agency Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

**RE: Freedom of Information Act Request for Records Related to Telford's
January 22, 2019 Request to Revise the Indian Creek TMDL**

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages (including e-mails to and from personal e-mail accounts), minutes, handouts, policy statements, data, technical evaluations or analysis, and studies.

Background

On January 22, 2019, Telford Borough Authority submitted a letter to EPA Region 3's Administrator requesting the revision of the Indian Creek TMDL based on new information and data that confirm the TMDL will be completely ineffective. (Attachment 1). This request presented a series of fundamental errors with the Indian Creek TMDL and "requested that (1) EPA revise the TMDL to reallocate the groundwater TP load from the MS4 to nonpoint source loads and (2) EPA revise the TMDL to indicate that compliance with the 40 ug/L TP target is unattainable for this segment of Indian Creek and therefore, the Telford STP and Telford MS4s should not be required to attain the substantial TP reductions prescribed by the TMDL." *Id.*

Request

This request seeks any records in EPA Region 3's possession related to Telford's above referenced January 22, 2019 request (excluding any records submitted by Telford to EPA through the January 22, 2019 letter).

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$100.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure. This request may not be consolidated with any other request submitted by Hall & Associates.

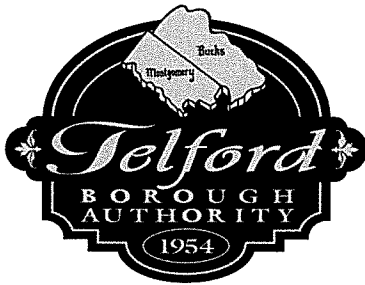
If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

/s/ Erin Thomas

Erin Thomas
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Attachment 1 – January 22, 2019 Request to Revise Indian Creek TMDL



122 Penn Avenue
Telford, Pennsylvania 18969-1912
Phone (215) 723-5000 Fax (215) 723-5328

January 22, 2019

VIA EMAIL

Mr. Cosmo Servidio
EPA Region III Administrator
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Catherine Libertz
Director, Water Protection Division
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RE: Request to Revise Indian Creek TMDL Based on Background Total Phosphorus Data, Local Precipitation Data, and the Misallocation of Groundwater Loads

Mr. Servidio and Ms. Libertz:

On behalf of Telford Borough Authority and the Borough of Telford ("Telford"), please see the accompanying additional comments regarding the Indian Creek Total Phosphorus ("TP") TMDL issued by EPA Region 3, based on post-TMDL sampling in the watershed above the WWTP discharge. As discussed below, based on this new information, it is apparent that the TMDL will be completely ineffective in meeting instream TP objectives and should be withdrawn.

The Indian Creek TMDL concluded that an April-October target TP concentration of 40 ug/L was required throughout the watershed to attain aquatic life water quality standards. As noted in our December 2018 letter, recent monitoring in 2014 and 2015 indicate that the 1) Telford STP effluent TP concentration is generally lower than upstream, background TP levels, and 2) natural background TP concentrations exceed 40 ug/L. Analysis of this information has revealed that there is yet another substantive error within the TMDL that requires its withdrawal and reconsideration. Based on this information it is clear that the TMDL inappropriately attributed all groundwater phosphorus loads to MS4s in the WLA calculations (TMDL Table 5-8) and compliance assurance evaluation. This created a series of fundamental errors with this TMDL:

1. This illegally regulated groundwater as part of the MS4 load to be controlled, an action beyond EPA's federal authority (*Tennessee Clean Water Network v. TVA*, 905 F.3d 436 (6th Cir. 2018)).
2. By this action EPA failed to consider or understand that such groundwater sources *prevent* the attainment of a 40 ug/l TP instream criterion above and below the wastewater discharge.
3. MS4 remedial measures are designed to *increase infiltration* (i.e., increase the groundwater flow), which does not, in fact, reduce TP loadings to this system in any meaningful way and certainly prevents compliance with the selected WLA reductions. Therefore, as this TMDL cannot possibly result in compliance with the chosen water quality objective.

As stated in the TMDL - "Since the entire watershed is considered an MS4, and thus receives a waste load allocation, the load allocation is zero." (TMDL at 68) Thus, Table 5-8, specified all loads to be controlled as part of the WLA – regardless of their actual source.

Landuse/Source	LOWER Salford	SOUDERTON	TELFORD	FRANCONIA
Agriculture	72.80	3.27	14.18	208.31
Pasture	63.16	5.23	5.61	176.95
Paved_Roads	0.30	0.17	0.33	0.31
Bare Rock/Sand/Clay	0.07	0.00	0.00	0.99
Deciduous Forest	0.07	0.00	0.01	0.21
Evergreen Forest	0.00	0.00	0.00	0.00
Wetlands	0.00	0.00	0.00	0.00
High Intensity Residential	16.63	8.91	18.60	35.77
High Intensity Commercial/Industrial/Transport	18.45	12.05	34.49	30.63
Low Intensity Residential	37.51	9.93	22.11	105.35
Groundwater	53.90	3.27	7.12	177.57
MS4 WLAs (lb/yr)	262.89	42.83	102.45	736.09
WWTPs WLAs (lb/yr)	101.30		156.10	20.60
Point Source WLA Summary (lb/yr)				1,422.25
5% MOS				79.91
6% Future Growth				95.892
Total Allowable Load (lb/yr)				1,598.05
Existing Load (lb/yr)				11,389.11

Groundwater (a natural background source) is the primary contributor of TP above the WWTP and should have been categorized under the LA, not WLA. An analysis of precipitation associated with the 2014 Indian Creek background phosphorus sampling demonstrates that, even during dry weather when MS4s were not discharging, total phosphorus exceeded the 40 ug/L TP target due to natural groundwater contributions (Figures 1A, 1B below).

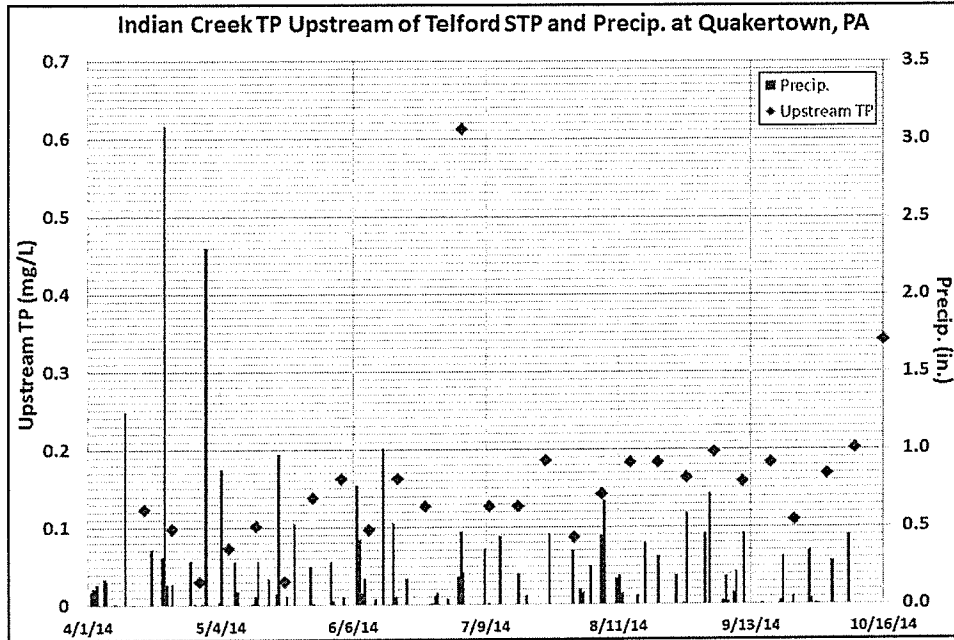


Figure 1A: Indian Creek TP Sampling Results Upstream of the Telford STP and Daily Precipitation at Quakertown, PA (April-October 2014)

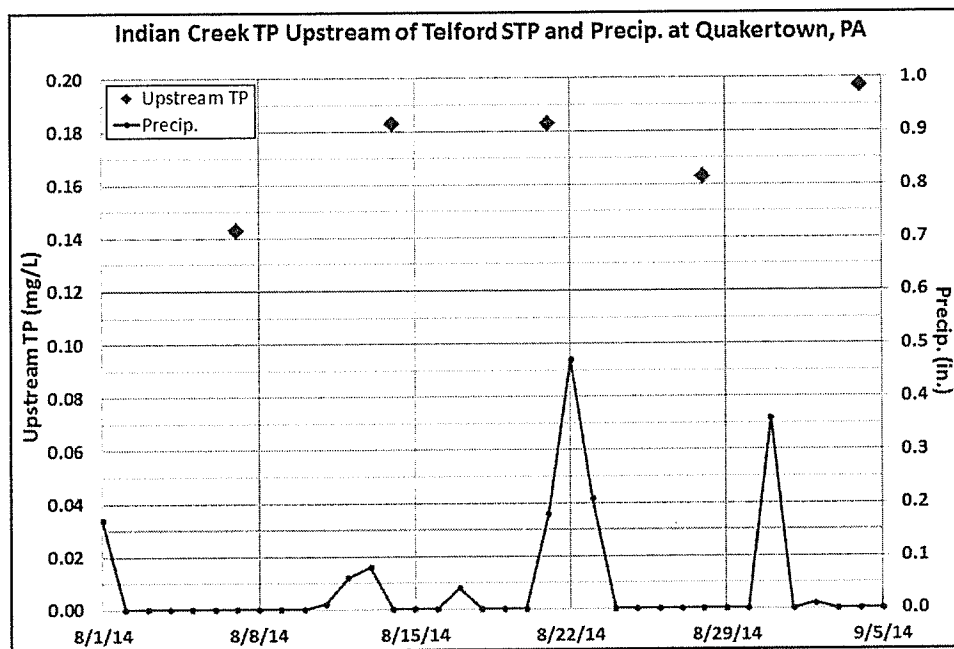


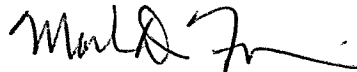
Figure 1B: Indian Creek TP Sampling Results Upstream of the Telford STP and Daily Precipitation at Quakertown, PA (August 2014)

As illustrated in Figure 1B, even during a prolonged dry period in early August 2014, the background TP concentration due to natural groundwater more than tripled the 40 ug/L TP target. Moreover, during rainfall events upstream TP concentrations remain unaltered – confirming that surface flows are not materially different. Capturing those flows in retention basins will only increase the groundwater component. Therefore, MS4 measures will be

completely ineffective in meeting the instream objective chosen by EPA. Therefore, Telford requests that 1) EPA revise the TMDL to reallocate the groundwater TP load from the MS4 to nonpoint source loads and 2) EPA revise the TMDL to indicate that compliance with the 40 ug/L TP target is unattainable for this segment of Indian Creek and therefore, the Telford STP and Telford MS4s should not be required to attain the substantial TP reductions prescribed by the TMDL.

We appreciate your attention on this matter. If you have any questions or concerns regarding this letter, please contact us.

Respectfully,

A handwritten signature in black ink, appearing to read "Mark D. Fournier", with a stylized flourish at the end.

Mark D. Fournier

cc: John Hall
Bill Hall
Ben Kirby
James Jacquette, Esq.
Telford Borough Authority
Telford Borough Council